

**BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke Probation
Filed Against:

Case No.: 6777

CLAUD ALLAN MILLER
2430 Serena Avenue
Clovis, CA 93619

**DEFAULT DECISION
AND ORDER**

Vocational Nurse License No. VN 156799

Respondent.

Claud Allan Miller ("Respondent") was served Petition to Revoke Probation No. 6777; Statement to Respondent; Notice of Defense form; copies of Government Code sections 11507.5, 11507.6 and 11507.7; and Request for Discovery by both first class and certified mail on September 26, 2008 at his address of record as provided in sections 11503 and 11505 of the Government Code of the State of California.

Respondent failed to file a Notice of Defense within the time specified in Government Code section 11506.

The Bureau of Vocational Nursing and Psychiatric Technicians ("Bureau") has determined that Respondent has waived his rights to a hearing to contest the merits of the Petition to Revoke Probation and that the Bureau will take action on Petition to Revoke Probation without a hearing, pursuant to Government Code section 11520.

The Bureau makes the following findings of fact:

FINDINGS OF FACT

1. Teresa Bello-Jones, J.D., M.S.N., R.N., made and filed the Petition to Revoke Probation solely in her capacity as the Bureau's Executive Officer.
2. On February 21, 1992, the Bureau issued Vocational Nurse License Number VN 156799 to Respondent. Said license expired on December 31, 2007 and has not been renewed.
3. Pursuant to Business and Professions Code sections 101.1(b) and 150, the Department of Consumer Affairs has succeeded to and is vested with all duties, powers, purposes,

responsibilities and jurisdiction not otherwise repealed or made inoperative of the Bureau and its executive officer; that the department is under the control of the Director of Consumer Affairs.

4. Pursuant to Business and Professions Code section 2875, the Bureau may discipline any licensed vocational nurse for any reason provided in Article 3 of the Vocational Nursing Practice Act.

5. Pursuant to Business and Professions Code section 118(b), the expiration of a license shall not deprive the Bureau of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued, or reinstated. Under Business and Professions Code section 2892.1, the Bureau may renew an expired license at any time within four years after the expiration.

6. Respondent has subjected his probation to revocation in that Respondent failed to comply with the terms and conditions of the Probation Program established by the Bureau. Respondent failed to comply with probation terms #1, #2, #3, #8, #9, #10, #14, #16, #17, #18, #19, #20, #21, and #22, as described in Petition to Revoke Probation No. 6777, a copy of which is attached as Exhibit "1" and incorporated by reference.

DETERMINATION OF ISSUES

Based on the foregoing Findings of Fact, Respondent has subjected his probation to revocation for failure to comply with the terms and conditions of the Probation Program established by the Bureau.

LOCATION OF RECORD

The record on which this Default Decision is based is located at the Sacramento office of the Bureau of Vocational Nursing and Psychiatric Technicians.

ORDER

WHEREFORE, the Bureau of Vocational Nursing and Psychiatric Technicians makes the following order:

Vocational Nurse License Number VN 156799 authorizing Respondent to act as a vocational nurse is hereby revoked.

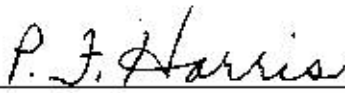
Respondent shall have the right to petition for reinstatement of the aforesaid license

1 pursuant to the provision of section 2878.7(a)(1) of the Business and Professions Code.

2 Respondent shall not be deprived of making any further showing by way of
3 mitigation; however, such showing must be made directly to the Bureau of Vocational Nursing and
4 Psychiatric Technicians, 2535 Capitol Oaks Drive, Suite 205, Sacramento, California, 95833 prior to
5 the effective date of this Decision.

6 This Default Decision shall become effective on February 5, 2009

7 Dated and signed December 23, 2008

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11 PATRICIA HARRIS
12 Deputy Director, Board/Bureau Support
13 Department of Consumer Affairs
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27 Attachments: Exhibit "1", Petition to Revoke Probation No. 6777 and Declaration of Service
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Exhibit "1"
Petition to Revoke Probation No. 6777 and Declaration of Service

SEP 26 2008

**Board of Vocational Nursing
and Psychiatric Technicians**

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Attorneys for Complainant

**BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC
TECHNICIANS
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke Probation
Against:

CLAUD ALLAN MILLER
2430 Serena Avenue
Clovis, California 93619

Vocational Nurse License No. VN 156799

Respondent.

Case No. 6777

**PETITION TO REVOKE
PROBATION**

Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") alleges:

PARTIES

1. Complainant brings this Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Bureau of Vocational Nursing and Psychiatric Technicians ("Bureau"), Department of Consumer Affairs.

2. On or about February 21, 1992, the Board issued Vocational Nurse License Number VN 156799 to Claud Allan Miller ("Respondent"). On or about December 31, 2007, the license expired and has not been renewed.

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1 probation, an accusation or petition to revoke has been filed against Respondent's
2 license or if the Attorney General's Office has been requested to prepare an
3 accusation or petition to revoke probation, the probationary period shall
4 automatically be extended and shall not expire until the board has acted on the
5 accusation or petition.

6 8. Respondent has violated the Probation Program, as set forth in the
7 following paragraphs:

8 **FIRST CAUSE TO REVOKE PROBATION**

9 **(Failure to Comply with the Board's Probation Program -
10 Obey All Laws)**

11 9. Condition 1 of the terms and conditions of probation contained in the
12 Decision and Order in Case No. 6777, provides:

13 Respondent shall obey all federal, state, and local laws, including all
14 statutes and regulations governing the license. Respondent shall submit, in
15 writing, a full and detailed account of all violations of the law to the board within
16 five (5) days of occurrence. Respondent shall submit two completed fingerprint
17 cards and the applicable fingerprint processing fees to the board within thirty (30)
18 days of the effective date of this Decision unless the board determines that
19 Respondent submitted fingerprinting cards as part of his license application.
20 Respondent shall submit a recent 2"x2" photograph of himself within thirty (30)
21 days of the effective date of this Decision.

22 10. Respondent's probation is subject to revocation for failing to comply with
23 Condition 1, referenced above, in that Respondent failed to submit proof of fingerprinting within
24 thirty (30) days of the effective date of the Decision. Respondent failed to submit a recent 2"x2"
25 photograph of himself within thirty (30) days of the effective date of the Decision. The Board
26 extended the due date for these items to November 8, 2006. Respondent failed to submit the
27 information as directed.

28 **SECOND CAUSE TO REVOKE PROBATION**

**(Failure to Comply with the Board's Probation Program -
Compliance with Probation Program)**

11 Condition 2 of the terms and conditions of probation contained in the
12 Decision and Order in Case No. 6777, states:

13 Respondent shall cooperate with the board's representatives in their
14 monitoring and investigation of Respondent's compliance with the probation
15 program.

1 12. Respondent's probation is subject to revocation for failing to comply with
2 Condition 2, referenced above, in that Respondent failed to cooperate with the Board's
3 representatives in their monitoring and investigation of his compliance with the probation
4 program, as more particularly set forth below:

5 a. Respondent failed to attend the initial probation compliance meetings
6 scheduled on October 18, 2006, and November 14, 2006.

7 b. Respondent failed to request that the meetings be rescheduled/postponed or to
8 submit documentation of a valid reason for this absence.

9 c. Respondent failed to accept certified mail sent to his address of record on
10 September 15, 2006, and October 23, 2006. In addition, Respondent failed to respond to the
11 October 23, 2006, *Notice of Probation Violation* as directed.

12 **THIRD CAUSE TO REVOKE PROBATION**

13 **(Failure to Comply with the Board's Probation Program -**
14 **Quarterly Report Requirements)**

15 13. Condition 3 of the terms and conditions of probation contained in the
16 Decision and Order in Case No. 6777, states:

17 Respondent shall submit quarterly reports, under penalty of perjury, in a
18 form required by the board. The reports shall certify and document compliance
with all the conditions of probation.

19 14. Respondent's probation is subject to revocation for failing to comply with
20 Condition 3, referenced above, in that Respondent failed to submit the following quarterly
21 reports:

<u>Reporting Period</u>	<u>Due Date</u>
July - September 2006	October 7, 2006
October - December 2006	January 7, 2007
January - March 2007	April 7, 2007
April - June 2007	July 7, 2007
July - September 2007	October 7, 2007
October - December 2007	January 7, 2008

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1 **FOURTH CAUSE TO REVOKE PROBATION**

2 **(Failure to Comply with the Board's Probation Program -**
3 **Notification to Employer(s))**

4 15. Condition 8 of the terms and conditions of probation contained in the
5 Decision and Order in Case No. 6777, states:

6 Respondent shall notify the board in writing within five (5) days of any
7 change in his employment status. If Respondent is terminated from any nursing or
8 health care related employment, he shall notify the board of the termination in
writing, and he shall give a full explanation of the circumstances surrounding the
termination.

9 16. Respondent's probation is subject to revocation for failing to comply with
10 Condition 8, referenced above, in that Respondent failed to notify the Board of his current
11 employment status.

12 **FIFTH CAUSE TO REVOKE PROBATION**

13 **(Failure to Comply with the Board's Probation Program -**
14 **Interviews/Meetings With Board Representative(s))**

15 17. Condition 9 of the terms and conditions of probation contained in the
16 Decision and Order in Case No. 6777, states:

17 Respondent shall appear in person at interviews or meetings as the board
18 or its designed representatives direct.

19 18. Respondent's probation is subject to revocation for failing to comply with
20 Condition 9, referenced above, in that Respondent failed to attend the initial probation
21 compliance meetings scheduled on October 18, 2006, and November 14, 2006. Respondent
22 failed to request that the meetings be rescheduled/postponed or to submit documentation of a
23 valid reason for his absence.

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1 **SIXTH CAUSE TO REVOKE PROBATION**

2 **(Failure to Comply with the Board's Probation Program -**
3 **Employment Requirements and Limitations)**

4 19. Condition 10 of the terms and conditions of probation contained in the
5 Decision and Order in Case No. 6777, states:

6 Respondent shall practice in his licensed capacity in the State of
7 California. This practice shall consist of no less than six continuous months each
8 year and no less than twenty hours per week.

9 20. Respondent's probation is subject to revocation for failing to comply with
10 Condition 10, referenced above, in that Respondent failed to demonstrate that he was working in
11 his licensed capacity.

12 **SEVENTH CAUSE TO REVOKE PROBATION**

13 **(Failure to Comply with the Board's Probation Program -**
14 **Maintenance of Valid License)**

15 21. Condition 14 of the terms and conditions of probation contained in the
16 Decision and Order in Case No. 6777, states:

17 At all times, including any period during which suspension or probation is
18 tolled, Respondent shall maintain an active current license with the board.

19 22. Respondent's probation is subject to revocation for failing to comply with
20 Condition 14, referenced above, in that Respondent failed to maintain his license in an active
21 current status. The license expired on December 31, 2007, and has not been renewed.

22 **EIGHTH CAUSE TO REVOKE PROBATION**

23 **(Failure to Comply with the Board's Probation Program -**
24 **Cost Recovery Requirements)**

25 23. Conditions 16, 17, 18, and 19, of the terms and conditions of probation
26 contained in the Decision and Order in Case No. 6777, state:

27 **Condition 16**

28 Respondent shall pay the board \$1,991 in costs. Respondent shall make
 timely payments as directed. Any failure to make a payment shall be a violation
 of probation.

1 **Condition 17**

2 The board, as is required by Zuckerman, shall determine whether a
3 payment schedule is necessary so that Respondent will be financially able to pay
4 the board's costs.

5 **Condition 18**

6 The board may defer the collection of payment for up to one (1) year if
7 Respondent demonstrates financial hardship and enters into an agreement to
8 reimburse the unpaid costs within one (1) year.

9 **Condition 19**

10 Except as provided above, the board shall not renew or reinstate
11 Respondent's license if he has failed to pay all the costs as ordered.

12 24. Respondent's probation is subject to revocation for failing to comply with
13 Conditions 16, 17, 18, and 19, referenced above, in that Respondent failed to pay the costs of
14 investigation and enforcement of this matter in the amount of \$1,991 as ordered. The Board
15 issued Demand for Payment notices to Respondent on December 14, 2006, January 22, 2007, and
16 May 14, 2007. Respondent failed to respond to the notices as directed or to establish a plan to
17 make payments.

18 **NINTH CAUSE TO REVOKE PROBATION**

19 **(Failure to Comply with the Board's Probation Program -
20 Psychological Evaluation)**

21 25. Condition 20 of the terms and conditions of probation contained in the
22 Decision and Order in Case No. 6777, states, in pertinent part:

23 Within sixty (60) days of the effective date of this Decision, Respondent
24 shall submit to a psychiatric or psychological evaluation. The evaluation shall be
25 performed by a psychiatrist licensed in California and board certified in psychiatry
26 or by a clinical psychologist licensed in California.

27 26. Respondent's probation is subject to revocation for failing to comply with
28 Condition 20, referenced above, in that Respondent failed to submit to a psychological evaluation
29 within sixty (60) days of the effective date of the Decision as ordered. The Board extended the
30 due date for the evaluation to November 8, 2006. Respondent failed to submit the evaluation as
31 directed.

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1 **TENTH CAUSE TO REVOKE PROBATION**

2 **(Failure to Comply with the Board's Probation Program -**
3 **Rehabilitation Program)**

4 27. Condition 21 of the terms and conditions of probation contained in the
5 Decision and Order in Case No. 6777, states, in pertinent part:

6 Within thirty (30) days of the effective date of this Decision, Respondent
7 shall enter a rehabilitation and monitoring program approved by the board.

8 28. Respondent's probation is subject to revocation for failing to comply with
9 Condition 21, referenced above, in that Respondent failed to submit verification of entry into a
10 rehabilitation and monitoring program within thirty (30) days of the effective date of the
11 Decision as ordered. The Board extended the due date for the this information to
12 November 3, 2006. Respondent failed to submit the information as directed.

13 **ELEVENTH CAUSE TO REVOKE PROBATION**

14 **(Failure to Comply with the Board's Probation Program -**
15 **Chemical Dependency Support/Recovery Group)**

16 29. Condition 22 of the terms and conditions of probation contained in the
17 Decision and Order in Case No. 6777, states:

18 Within five (5) days of the effective date of this Decision, Respondent
19 shall begin attending a chemical dependency support group (e.g. Alcoholics
20 Anonymous, Narcotics Anonymous, Nurse Support Group). Respondent shall
21 submit verified documentation of attendance with each quarterly report.
22 Respondent shall continue to attend such group for the duration of probation.

23 30. Respondent's probation is subject to revocation for failing to comply with
24 Condition 22, referenced above, in that Respondent failed to submit *Attendance Verification*
25 forms documenting his attendance at support group meetings as follows:

<u>Reporting Period</u>	<u>Due Date</u>
July - September 2006	October 7, 2006
October - December 2006	January 7, 2007
January - March 2007	April 7, 2007
April - June 2007	July 7, 2007
July - September 2007	October 7, 2007
October - December 2007	January 7, 2008

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Revoking the probation that was granted by the Board of Vocational Nursing and Psychiatric Technicians in Case No. 6777, and reimposing the disciplinary order that was stayed, thereby revoking Vocational Nurse License Number VN 156799, issued to Claud Allan Miller; and,

2. Taking such other and further action as deemed necessary and proper.

DATED: September 26, 2008.



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Bureau of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

SA2008100371

Petition.Revoke (kdg) 8/11/08

Exhibit A

Decision and Order

Board of Vocational Nursing and Psychiatric Technicians Case No. 6777

BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

Case No. 6777

Claud Miller
2430 Serena Avenue
Clovis, CA 93619

OAH No. N2006020039

Vocational Nurse License
Number VN 156799

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the above entitled matter.

This Decision shall become effective on August 31, 2006.

IT IS SO ORDERED this 31ST day of July, 2006.

Sister Marie de Porres Taylor

Sister Marie de Porres Taylor
President

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CLAUD ALLAN MILLER
2430 Serna Avenue
Clovis, California 93619

Vocational Nurse License No. VN156799

Respondent.

Case No. 6777

OAH No. N2006020039

PROPOSED DECISION

Robert Walker, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter in Fresno, California, on May 30, 2006.

Robert Browning Miller, Deputy Attorney General, represented the complainant, Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians.

Claud Allan Miller, the respondent, appeared in propria persona.

The record was closed on May 30, 2006.

FACTUAL FINDINGS

BACKGROUND

1. On February 21, 1992, the Board of Vocational Nursing and Psychiatric Technicians issued vocational nurse license number VN156799 to the respondent, Claud Allan Miller.

CONVICTIONS

2. On December 9, 1998, respondent was convicted of driving while under the influence of alcohol.

3. On July 17, 1999, respondent was convicted of driving while under the influence of alcohol.

4. On August 2, 1999, respondent was convicted of driving while under the influence of alcohol.

5. On August 7, 2000, in the Superior Court of California for the County of Fresno, respondent was convicted of three counts of violating Vehicle Code sections 23152, driving while having 0.08 percent or more, by weight, of alcohol in his blood. Respondent pled guilty to committing the offense on September 6, 1999; December 18, 1999; and April 4, 2000. The conviction was with three prior convictions. The court sentenced respondent to three years in prison with credit for time served and imposed a fine of \$600.

REHABILITATION

6. Respondent admits all of the convictions and all of the alleged conduct that gave rise to the convictions. He testified that, for two years, he was out of control and that he accepts full responsibility for his conduct.

7. Respondent was not in the habit of drinking with friends. He tended to be introverted when he drank. And his former wife, with whom he now lives, does not drink.

8. Respondent acknowledges that he needs help. He now recognizes that he cannot cope with his alcoholism by himself.

9. On March 9, 2006, after a bout of heavy drinking, respondent was hospitalized for 12 days because of severe depression. Respondent testified that he has not had any alcoholic beverage since March 9, 2006.

10. Respondent is under the care of a psychiatrist for his dual diagnosis of alcoholism and depression. He takes prescription medication to control his depression.

11. On March 22, 2006, respondent began treatment in the Kaiser Permanente Chemical Dependency Service Department in Fresno. The program is a two year program. For slightly less than one month, respondent participated in the day treatment phase of the program for six hours a day, five days a week, and for three hours on Saturdays. That phase of the program consisted of various types of counseling and group therapy. On April 17, 2006, respondent completed the day treatment phase of the program. As of the date of the hearing in this matter respondent was in the intensive outpatient phase of the program, in which he attended group therapy sessions for four hours a day, four days a week. He also attended Alcoholics Anonymous (AA) meetings four times a week. He was scheduled to complete that phase and move to the early recovery phase on June 9, 2006. In the early recovery phase participants attend group therapy sessions for one and one-half hours a day, four days a week for two years.

12. Respondent regularly attends 12-step meetings. He has a sponsor. He testified that he participates fully.

13. Respondent has made other attempts to stop drinking, but, except for earlier, sporadic attendance at AA meetings, this is the first time he has sought help. From 1985 to 1995, respondent had a 10 year period of sobriety. During the past four years he has had two brief periods of sobriety.

14. Respondent testified that he expects not to relapse this time because he has admitted that he needs help, has obtained help, and is dealing with this depression as well as with his alcoholism.

MITIGATION

15. Respondent testified that he has never allowed his alcoholism to interfere with his work. And complainant offered no evidence that respondent's alcoholism has caused any actual harm to the public or a patient.

COSTS

16. Complainant submitted a certification of costs showing costs of investigation and enforcement in the amount of \$1,991. It is found that those costs are reasonable.

LEGAL CONCLUSIONS

GROUND FOR IMPOSING DISCIPLINE

1. By reason of the matters set forth in Findings 2 through 5, it is determined that respondent has been convicted of crimes that are substantially related to the qualifications, functions, and duties of a licensed vocational nurse. Thus, pursuant to Business and Professions Code section 2878, subdivision (f), and section 490, there are grounds to discipline respondent's license.

2. By reason of the matters set forth in Findings 2 through 5, it is determined that respondent used an alcoholic beverage to an extent or in a manner dangerous or injurious to himself, another person, or the public, or to the extent that the use impaired his ability to conduct with safety the practice authorized by his license. Thus, pursuant to Business and Professions Code section 2878, subdivision (a), and section 2878.5, subdivision (b), there are grounds to discipline respondent's license.

3. By reason of the matters set forth in Findings 2 through 5, it is determined that respondent engaged in unprofessional conduct. Thus, pursuant to Business and Professions Code section 2878, subdivision (a), and section 2878.5, subdivision (c), there are grounds to discipline respondent's license.

EVIDENCE THAT IT WOULD BE APPROPRIATE TO ISSUE A PROBATIONARY LICENSE

4. Respondent's sobriety date is March 9, 2006. That was less than four months ago. The brief period of respondent's rehabilitation raises a serious question about placing him on probation rather than revoking his license outright. The evidence that respondent is likely to succeed in his rehabilitation, however, is substantial. Respondent lives in a sober atmosphere. He has finally recognized that he needs help in order to deal with his alcoholism. He has also come to terms with the fact that he has a dual diagnosis of alcoholism and depression. And he has obtained professional help for both his alcoholism and depression. The Kaiser alcohol treatment program in which respondent is participating is intense. In conjunction with that program, respondent attends AA meetings and has an AA sponsor.

5. Respondent's determination is important, too. He testified that, while he has had periods of sobriety of varying lengths, he is determined to avail himself of help this time and not relapse.

6. On balance, it is determined that the appropriate discipline is probation.

COSTS

7. By reason of the matters set forth in Finding 16, it is determined that the board's costs in this matter were \$1,991 and that, within the terms of Business and Professions Code section 125.3, those costs were reasonable.

8. In *Zuckerman v. State Board of Chiropractic Examiners*,¹ a case in which the State Board of Chiropractic Examiners had disciplined a licensee, the Supreme Court of California dealt with the issue of cost recovery. The court held that "the Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that ... [cost recovery] does not deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing." The court established five rules that an agency must observe in assessing the amount to be charged. To some extent, these rules are similar to matters one would consider in determining whether costs are "reasonable" as is required by Business and Professions Code section 125.3. The court's rules, however, go beyond considerations of whether the costs are reasonable. The court said:

[T]he Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a chiropractor who has committed some misconduct but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. The Board must consider the chiropractor's "subjective good faith belief in the merits of his or her position" [Citation] and whether the

¹ *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.

chiropractor has raised a "colorable challenge" to the proposed discipline [Citation.] Furthermore, as in cost recoupment schemes in which the government seeks to recover from criminal defendants the cost of their state-provided legal representation [Citation] the Board must determine that the chiropractor will be financially able to make later payments. Finally the Board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation and prosecution to prove that a chiropractor engaged in relatively innocuous misconduct.²

9. In this case, respondent did engage in the conduct that is the primary focus of the accusation. Respondent had a good faith belief in the merits of his position and raised a reasonable challenge as to, at least, the severity of the proposed discipline. Respondent, however, offered no evidence that assessing the full costs of investigation and prosecution against him would unfairly penalize him.

10. Moreover, this was not a case in which the board conducted a disproportionately large investigation and prosecution to prove relatively innocuous misconduct.

11. That leaves one final matter to be considered. Will respondent be financially able to make payments to reimburse the board for its costs? Respondent did not present evidence that would support a finding that he is not financially able to pay the cost recovery.

12. Thus, application of the *Zuckerman* rules does not lead to a conclusion that the cost award should be reduced or eliminated.

13. The board, as is required by *Zuckerman*, must determine whether a payment schedule is necessary so that respondent will be financially able to pay the board's costs.

ORDER

Vocational nurse license number VN156799 issued to respondent, Claud Allan Miller, is revoked. The revocation, however, is stayed for three years, and a probationary license shall be issued on the following conditions:

1. Respondent shall obey all federal, state, and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of all violations of the law to the board within five days of occurrence. Respondent shall submit two completed fingerprint cards and the applicable fingerprint processing fees to the board within thirty days of the effective

² *Id.* at p. 45.

date of this decision unless the board determines that respondent submitted fingerprint cards as part of his license application. Respondent shall submit a recent 2" x 2" photograph of himself within thirty days of the effective date of this decision.

2. Respondent shall cooperate with the board's representatives in their monitoring and investigation of respondent's compliance with the probation program.
3. Respondent shall submit quarterly reports, under penalty of perjury, in a form required by the board. The reports shall certify and document compliance with all of the conditions of probation.
4. Within five days of a change of residence or mailing address, respondent shall notify the board, in writing, of his new address and any change in his work or home telephone number.
5. If respondent leaves California to reside or practice in another state, he shall notify the board in writing within five days, and he shall notify the board in writing within five days of his return to California. The period of probation shall not run during any time respondent is residing or practicing outside of California.
6. Respondent shall give a copy of this decision to all of his current health-care-profession employers. And he shall cause each of his current employers to send a letter to the board within ten days of the effective date of this decision in which the employer acknowledges receipt of a copy of this decision. Before accepting employment with any other employer in a health care profession, respondent shall give a copy of this decision to the prospective employer and shall cause the prospective employer to send a letter to the board acknowledging receipt of a copy of this decision. For purposes of this condition, "health care profession" includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.
7. Respondent shall cause each health care employer who employs him to submit quarterly reports to the board. The reports shall be on a form provided by the board and shall include a performance evaluation and such other information as the board may require.
8. Respondent shall notify the board in writing within five days of any change in his employment status. If respondent is terminated from any nursing or health care related employment, he shall notify the board of the termination in writing, and he shall give a full explanation of the circumstances surrounding the termination.
9. Respondent shall appear in person at interviews or meetings as the board or its designated representatives direct.

10. Respondent shall practice in his licensed capacity in the State of California. This practice shall consist of no less than six continuous months each year and no less than twenty hours per week.
11. Respondent shall not work for a nurses' registry, in a private duty position, in a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a board approved continuing education course except as approved in writing by the board. Respondent shall work only on a regularly assigned, identified, and predetermined work site or sites and shall not work in a float capacity except as approved in writing by the board.
12. Respondent shall not commence any new employment without first obtaining the board's approval in writing of the level of supervision to be provided for him.
13. Respondent shall not function as a charge nurse. That is, he shall not work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants, or unlicensed assistive personnel except as approved in writing by the board. Respondent shall not function as a supervising psychiatric technician except as approved in writing by the board.
14. At all times, including any period during which suspension or probation is tolled, respondent shall maintain an active current license with the board.
15. If respondent's license expires by operation of law or otherwise, his license, on renewal or reinstatement, shall be subject to all of the conditions of probation not previously satisfied.
16. Respondent shall pay the board \$1,991 in costs. Respondent shall make timely payment as directed. Any failure to make a payment shall be a violation of probation.
17. The board, as is required by *Zuckerman*, shall determine whether a payment schedule is necessary so that respondent will be financially able to pay the board's costs.
18. The board may defer the collection of payments for up to one year if respondent demonstrates financial hardship and enters into an agreement to reimburse the unpaid costs within one year.
19. Except as provided above, the board shall not renew or reinstate respondent's license if he has failed to pay all the costs as ordered.
20. Within sixty days of the effective date of this decision, respondent shall submit to a psychiatric or psychological evaluation. The evaluation shall be

performed by a psychiatrist licensed in California and board certified in psychiatry or by a clinical psychologist licensed in California. The purpose of the evaluation shall be to determine respondent's current mental, psychological, and emotional fitness to perform all professional duties with safety to himself and to the public. Before the examination, respondent shall provide the evaluator with a copy of this decision. Respondent shall pay the cost of the examination. Respondent shall cause the evaluator to complete a written psychological report concerning respondent's status and progress and other information that the board requests. The report shall be submitted within 90 days of the effective date of this decision. If the evaluator finds that respondent is not psychologically fit to practice safely or can safely practice only with restrictions, the evaluator shall notify the board in writing within five working days. If the evaluator determines that respondent is not psychologically fit to practice safely or can safely practice only with restrictions, the board shall notify respondent in writing of the evaluator's determination and shall order respondent to cease practicing or to restrict his licensed activities. Respondent shall comply with this condition until the board notifies him in writing that it is satisfied with his fitness to practice safely. Respondent shall document his compliance with such an order in whatever manner the board requires. If the evaluator finds that respondent requires psychotherapy, respondent shall participate in a therapeutic program approved by the board. Respondent shall pay the cost of the therapy.

21. Within thirty days of the effective date of this decision, respondent shall enter a rehabilitation and monitoring program approved by the board. Respondent shall successfully complete a treatment contract recommended by the program and approved by the board. Components of the treatment contract shall be relevant to the violation and to respondent's current status in recovery or rehabilitation. The components may include, but are not limited to, restrictions on practice and work setting, random bodily fluid testing, abstention from drugs and alcohol, use of work site monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations, and other appropriate rehabilitation or monitoring programs. Respondent shall pay the cost of the program.

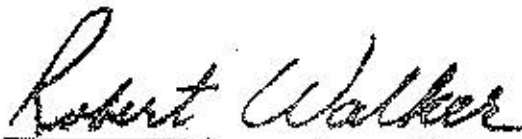
22. Within five days of the effective date of this decision, respondent shall begin attending a chemical dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group). Respondent shall submit verified documentation of attendance with each quarterly report. Respondent shall continue to attend such a group for the duration of his probation.

23. Respondent shall completely abstain from the use of alcoholic beverages during the period of probation.

24. If respondent violates a condition of his probation, the board, after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of respondent's license. If during the period of probation, an accusation or petition to revoke has been filed against respondent's license or if the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation, the probationary period shall automatically be extended and shall not expire until the board has acted on the accusation or petition.

25. On respondent's successful completion of probation and satisfaction of all other conditions and requirements for licensure, the board will issue an unrestricted license to him.

DATED: June 28, 2006

A handwritten signature in cursive script that reads "Robert Walker". The signature is written in dark ink and is positioned above a horizontal line.

ROBERT WALKER

Administrative Law Judge

Office of Administrative Hearings

Accusation No. 6777

Board of Vocational Nursing and Psychiatric Technicians

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7
8 BEFORE THE
9 BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 6777

12 CLAUD ALLAN MILLER
2434 Sevens Avenue
13 Clovis, California 93611

ACCUSATION

14 Vocational Nurse License No. VN156799

15 Respondent.

16
17 Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") alleges:

18 PARTIES

19 1. Complainant brings this Accusation solely in her official capacity as the
20 Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians ("Board"),
21 Department of Consumer Affairs.

22 2. On or about February 21, 1992, the Board issued Vocational Nurse
23 License Number VN156799 to Claud Allan Miller ("Respondent"). The license will expire on
24 December 31, 2005, unless renewed.

25 STATUTORY PROVISIONS

26 3. Section 2875 of the Business and Professions Code ("Code") provides, in
27 pertinent part, that the Board may discipline the holder of a vocational nurse license for any

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1 reason provided in Article 3 (commencing with Code section 2875) of the Vocational Nursing
2 Practice Act.

3 4. Section 118, subdivision (b), of the Code provides, in pertinent part, that
4 the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary
5 action during the period within which the license may be renewed, restored, reissued or
6 reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any
7 time within four years after the expiration.

8 5. Section 2878 of the Code states, in pertinent part:

9 "The Board may suspend or revoke a license issued under this chapter [the
10 Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of the following:

11 (f) Conviction of a crime substantially related to the qualifications, functions, and
12 duties of a licensed vocational nurse, in which event the record of the conviction shall be
13 conclusive evidence of the conviction."

14 6. Section 2878.5 of the Code states, in pertinent part:

15 "In addition to other acts constituting unprofessional conduct within the meaning
16 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person
17 licensed under this chapter to do any of the following:

18 (b) Use any controlled substance as defined in Division 10 of the Health and
19 Safety Code, or any dangerous drug as defined in Article 8 (commencing with Section 4210) of
20 Chapter 9 of Division 2 of this code, or alcoholic beverages, to an extent or in a manner
21 dangerous or injurious to himself or herself, any other person, or the public, or to the extent that
22 such use impairs his or her ability to conduct with safety to the public the practice authorized by
23 his or her license.

24 (c) Be convicted of a criminal offense involving possession of any narcotic or
25 dangerous drug, or the prescription, consumption, or self-administration of any of the substances
26 described in subdivisions (a) and (b) of this section, in which event the record of the conviction is
27 conclusive evidence thereof."

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1 7. Section 490 of the Code provides, in pertinent part, that the Board may
2 suspend or revoke a license when it finds that the licensee has been convicted of a crime
3 substantially related to the qualifications, functions or duties of a licensed vocational nurse.

4 8. Section 125.3 of the Code provides, in pertinent part, that the Board may
5 request the administrative law judge to direct a licensee found to have committed a violation or
6 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
7 and enforcement of the case.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Conviction of a Crime)**

10 9. Respondent is subject to disciplinary action under Code sections 2878,
11 subdivision (f), and 490 in that he was convicted of the following crimes that are substantially
12 related to the qualifications, functions or duties of a licensed vocational nurse:

13 a. On or about August 7, 2000, in the case of *People v. Claud Allan Miller*,
14 (Super. Ct. Fresno County, Case No. P99918124-9), Respondent was convicted by the Court on
15 his plea of guilty to violating Vehicle Code section 23152, subdivision (b) (driving while having
16 0.08 percent and more, by weight, of alcohol in his blood) on September 6, 1999,
17 December 18, 1999, and April 4, 2000; with three priors on October 21, 1998, April 24, 1999,
18 and December 8, 1999.

19 b. On or about July 19, 1999, in the case of *People v. Claud Allan Miller*,
20 (Super. Ct. Fresno County, Case No. 99903187-3), Respondent was convicted by the Court on
21 his plea of guilty to violating Vehicle Code section 23152, subdivision (b) (driving while having
22 0.08 percent and more, by weight, of alcohol in his blood) on April 24, 1999; with one prior on
23 October 21, 1998.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Use of Alcohol Beverages)**

26 10. Respondent is subject to disciplinary action under Code section 2878,
27 subdivision (a), on the grounds of unprofessional conduct as defined in section 2878.5,
28 subdivision (b), of the Code, in that on and between October 21, 1998, and April 4, 2000,

1 Respondent used an alcoholic beverage or drug to an extent or in a manner dangerous or
2 injurious to himself, and the public, when she operated a vehicle while under the influence of
3 alcohol and/or drugs.

4 THIRD CAUSE FOR DISCIPLINE

5 (Conviction of a Crime Involving the Consumption of Alcohol)

6 11. Respondent is subject to disciplinary action under Code section 2878,
7 subdivision (a), on the grounds of unprofessional conduct as defined in section 2878.5,
8 subdivision (c), of the Code, in that on or about July 19, 1999, and August 7, 2000, Respondent
9 was convicted by the Court on his plea of guilty to violating Vehicle Code section 23152,
10 subdivision (b) (driving while having 0.08 percent and more, by weight, of alcohol in his blood).

11 PRAYER

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein
13 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric
14 Technicians issue a decision:

- 15 1. Revoking or suspending Vocational Nurse License Number VN156799,
16 issued to Claud Allan Miller;
- 17 2. Ordering Claud Allan Miller to pay the Board of Vocational Nursing and
18 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
19 pursuant to Business and Professions Code section 125.3; and,
- 20 3. Taking such other and further action as deemed necessary and proper.

21 DATED: April 11, 2005

22 

23 TERESA BELLO-JONES, LD., M.S.N., R.N.
24 Executive Officer
25 Board of Vocational Nursing and Psychiatric Technicians
26 Department of Consumer Affairs
27 State of California
28 Complainant

SA2004103538

Accusation (kdg) 10/25/04